

SHORE ACCESS

Expert suggests Rhode Islanders might need to rethink the law on shoreline rights

New commission tasked with examining beach access hears about the possibility a key 1982 decision might have been overturned.

By [Brian Amaral](#) Globe Staff, Updated September 23, 2021, 7:05 p.m.



If one expert is right, and a 1982 Supreme Court decision has been substantially overturned, it would mean Rhode Islanders would have much more access to the shore. JONATHAN WIGGS/GLOBE STAFF

PROVIDENCE — For nearly 40 years, a Rhode Island Supreme Court case has set the

boundaries for public access to the shore at what's called the mean high tide line.

But what if following that law was wrong? What if, in fact, the 1982 decision known as “Ibbison” had actually been overturned just a few years later — by the people of Rhode Island themselves?

A House panel of experts and stakeholders working to suggest changes to shoreline access heard parts of that argument on Thursday.

The debate over where to draw the line on shoreline access, said Democratic state Rep. Terri Cortvriend, who co-chairs the [12-member House study commission](#), “is the crux of the matter of why we’re here.”

The study commission’s broad agenda is to look at access issues on Rhode Island’s shoreline, and make recommendations to the House, probably next March. They’ll host a number of experts in the coming months. On Thursday, the second meeting, the commission hosted Sean Lyness, a faculty fellow at New England Law in Boston.

Lyness has spent years studying the issue, particularly as it relates to Rhode Island. He’s also developed it in a [law review article](#) that his presentation drew from. Some parts of the argument will be left for another day, and by a more qualified authority: Dennis Nixon, a commission member who helped develop the state constitution and will make a presentation about it at its next meeting.

But it was clear where Lyness was headed: Many Rhode Islanders might need to dramatically rethink what the law on shoreline access actually says.

There are more than a million Rhode Islanders, and therefore likely more than a million opinions on shoreline access, so this argument won’t be new to some people. In fact, some go so far as to say that Ibbison case is so confounding — the mean high tide line is a scientific measurement, rather than one that can be seen with the naked eye, so how could it serve as a boundary for important rights? — that it should be entirely

disregarded. But towns and cities generally cite the Ibbison decision as the law of the land, and state courts have stuck to its central holding.

So if Lyness is right that it's been substantially overturned, it would mean Rhode Islanders would have much more latitude to access the shore, from beaches to rocky promontories to sandy spits.

In a crisp PowerPoint presentation, Lyness summarized centuries of law, which has its roots in ancient Rome and Greece. Those legal precepts say that the shore is held in public trust and belongs to the sovereign. In the case of England, that meant the king. In the case of the U.S., that means the individual states, on behalf of the people.

Rhode Island's 1663 charter grants to the king's loving subjects — their words — the right to access the shore for fishing and whaling. Over the centuries those rights developed as court cases came down and the constitution evolved.

But where to draw the line?

The state Supreme Court definitively weighed in in 1982. A few people were on the beach in Westerly. It is hard to think of a more sympathetic pattern of facts, Lyness noted. They were there doing a beach cleanup. But when they got to an area where a man said he owned the beach, they were arrested for trespassing.

The case went up to the Supreme Court, which ruled the boundary between the public's access and private rights was at the mean high tide line. That's where many states, along with the federal government, set the line. The court also tossed the criminal case, and said for anyone to be convicted of criminal trespassing, a prosecutor would have to prove beyond a reasonable doubt they knew where the line was and intentionally crossed it.

Where is the mean high tide line? It's not visible to the naked eye. It's an average of where high water reaches over 18.6 years. It is sometimes, as it was in the Ibbison case, underwater, Lyness said.

That last fact is key to Lyness' argument. Because a few years after the Ibbison decision, with Nixon's help, the state rewrote its constitution. And it took a lot of those informal shoreline rights and put them into black-letter constitutional law. One of those rights was passage along the shore. But how can you pass along the shore if it's sometimes underwater? Lyness points to this contradiction as evidence that the 1986 constitutional framers were, in effect, overturning the Ibbison decision.

In place of the mean high tide line, Lyness argues in his law review article that the state could look to the most recent high tide, which is most readily visible by where the seaweed line is. (After all, the 1986 constitution also codified the right to collect seaweed — and the seaweed line is where you get some of the best stuff.) Some Rhode Islanders already put this theory into practice, only to be chased off by homeowners or security guards.

"The wording change... I think can only be read as in essence overruling that particular line-drawing from Ibbison," Lyness said.

Much of Lyness' constitutional argument is drawn from his law review article, rather than his presentation on Thursday. He'll have to convince more than just this unpaid advisory board, but he got a warm reception from the study commission, meeting in an equally warm State House lounge.

State Rep. Blake Filippi, a Republican of Block Island, pointed out after Lyness' presentation that on a full moon at high tide, you'd have to walk above the "Ibbison line" to traverse dry sand. That would be going over what the Ibbison decision considers private property.

"We have a constitutional right to traverse the shore," Filippi said, "so it seems like the right is in conflict with the holding in Ibbison."

"Absolutely," said Lyness.

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